

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2 -----x
UNITED STATES OF AMERICA

3
4 versus

DAN ZHONG,

Defendant.

16 CR 614(DLI)

U.S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

May 22, 2017

-----x 10:00 a. m.

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8 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE

9 BEFORE THE HONORABLE DORA IRIZARRY

10 UNITED STATES DISTRICT JUDGE

11
12 APPEARANCES

13
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25 Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

1 THE CLERK: All rise.

2 THE COURT: Please have a seat, everyone.

3 MR. AKERMAN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 THE CLERK: Criminal Cause for Status Conference,

6 Docket Number 16 CR 614, United States versus Dan Zhong.

7 Please state your appearances.

8 MR. PRAVDA: Good morning, Your Honor. Doug Pravda,

9 Nick Moscow and Ian Richardson for the United States.

10 THE COURT: Good morning to all of you. Please have
11 a seat.

12 MR. PRAVDA: And I also want to note the presence in
13 the courtroom of Harry Rucker, the Court Information Security
14 Officer.

15 THE COURT: Yes. Yes. Good morning.

16 MR. AKERMAN: Good morning.

17 THE COURT: And current counsel? Yes?

18 MR. AKERMAN: Yeah. Nick Akerman for the Defendant
19 Zhong.

20 MR. COLANGELO-BRYAN: Josh Colangelo-Bryan, Dorsey
21 and Whitney, also for the defendant.

22 MS. NG: Michelle Ng, Dorsey and Whitney, also for
23 the defendant.

24 MR. FITZPATRICK: Thomas Fitzpatrick, also for the
25 defendant.

1 THE COURT: And good morning to all of you. Please
2 have a seat.

3 MR. CLEARY: Good morning, Your Honor. Robert
4 Cleary from Proskauer Rose for Mr. Zhong, who is present with
5 me in court. To his right is a court interpreter, and then to
6 her right are my two colleagues, Dietrich Snell and Brittany
7 Benavidez.

8 THE COURT: Good morning to all of you.

9 And may we have, please, the name of the Spanish --
10 of the Mandarin interpreter for the record?

11 THE INTERPRETER: Patsy Ong.

12 THE COURT: Good morning, Ms. Ong.

13 May we have her sworn, please?

14 (Interpreter sworn.)

15 THE COURT: Thank you.

16 All right. I'm going to ask everyone, please, to
17 remain seated and speak in the microphones. Make sure that --
18 there should be a little green light that's on if you touch
19 the base. It should be on. Otherwise, it's hard for us to
20 hear up here and certainly, the members of the audience. Good
21 morning to all of you. They will not be able to hear.

22 So this is on for a status conference, but before we
23 get into the Government's motion for a CIPA conference, there
24 is the matter of the firm of Dorsey and Whitney, who has been
25 representing Mr. Zhong and made a motion to withdraw as

1 counsel.

2 I have to say, Mr. Zhong, that I am somewhat
3 dismayed by the timing of this because I went to great lengths
4 to push the Department of Justice to expedite the security
5 clearance of all of your attorneys, which they did. They did
6 what I frankly thought was impossible, given the current state
7 of the government and the many, many people that currently
8 have to undergo these security clearances, given a new
9 administration and new staffing -- which in terms of who gets
10 what priority, I can't say. But certainly, I thought it was
11 an incredible feat that DOJ was able to accomplish the
12 security clearance of all of your attorneys, your initial
13 attorneys in the case.

14 And that put the Government to a great deal of time
15 and expense. And I'm not sure what kind of gamesmanship that
16 you plan on engaging in, but it's not going to fly here. You
17 have been insisting on moving this case forward quickly. The
18 Court has done its best to accommodate it. The Department of
19 Justice has done its best to accommodate that desire, so has
20 the Government.

21 And so now you've just delayed matters -- and I tell
22 you not because you don't have a right to have counsel of your
23 choosing. You certainly do. When you're paying for counsel,
24 you certainly have a right to counsel of your choosing. But I
25 don't want to hear any complaints that the case is moving too

1 slowly.

2 Are we understood, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. So, obviously, Mr. Zhong desires
5 to have new counsel and in fact, has retained new counsel. So
6 I'm not going to keep current counsel from Dorsey and Whitney
7 on the case. I would hope that you would turn over whatever
8 files you have to new counsel to sort of move the way. There
9 has been a lot of pretty extensive discovery that's been
10 turned over already in this case.

11 Just to be aware, the Court cannot direct the
12 Department of Justice to withdraw your security clearance
13 because it's done. It's a done deal; however, your need to
14 know on this case is over. Are we understood about that for
15 counsel?

16 MR. AKERMAN: Yes, Your Honor, and also includes
17 Mr. Fitzpatrick, as well.

18 THE COURT: That's right. And I'm sorry. That's
19 right. Mr. Fitzpatrick is his own firm. Thank you.
20 Absolutely. So you have the thanks of the Court and then I
21 won't delay you any further.

22 MR. AKERMAN: Thank you, Your Honor.

23 THE COURT: All right. Thank you.

24 (Mr. Akerman, Ms. Ng, Mr. Colangelo-Brian and
25 Mr. Fitzpatrick left the courtroom.)

1 THE COURT: And I know you've just recently come in.
2 Who's going to speak on behalf of the defense counsel?

3 MR. CLEARY: I will, Your Honor. Robert Cleary.

4 THE COURT: Okay. Thank you, sir.

5 I know you've just recently come into the case. The
6 discovery is voluminous, but most importantly, we need to
7 discuss whether or not any of you have the security clearance
8 that's necessary in order to be able to view any of the
9 classified information that there may be in the case. The
10 Government has been going through the information on a rolling
11 basis, as I understand it. The Government can correct me if
12 I'm saying something that's not correct, to see what can be
13 declassified, so as to avoid the cumbersome process of using
14 classified information.

15 So if you could clarify for me, Mr. Cleary, whether
16 or not you or any other members of your team have a security
17 clearance.

18 MR. CLEARY: Your Honor, we don't currently. We
19 have been working with Mr. Rucker to get those clearances.
20 Mr. Snell and I both had clearances in our prior lives as
21 Government lawyers. We're hoping that will speed up the
22 process a little bit, but we don't really know that --

23 THE COURT: It depends on how long ago that was, is
24 the issue.

25 MR. CLEARY: Over ten years for both of us.

1 THE COURT: Yes. I don't know how helpful that will
2 be. Hopefully, it will be helpful.

3 And Mr. Rucker, can you give us an idea of how
4 long -- this is Mr. Harry Rucker, for the record.

5 Good morning, sir.

6 MR. RUCKER: Good morning, Your Honor.

7 THE COURT: Given that there are all kinds of things
8 happening down in Washington with security clearances and so
9 on --

10 MR. RUCKER: Your Honor, we're at the beginning
11 stages. Counsel is correct. They were cleared previously;
12 however, that was over ten years, so we consider it out of
13 scope. Essentially, we're starting from scratch with all of
14 them.

15 THE COURT: Okay.

16 MR. RUCKER: My estimate of the amount of time this
17 is going to take is about four months. It's possible we can
18 get them interims; however, we're not that far in the process
19 to make that determination.

20 THE COURT: Okay. So I don't know if that in any
21 way, Mr. Pravda, informs the motion that the Government was
22 making to initiate a whole CIPA process, because we don't have
23 counsel that's really able to address any of those issues, but
24 what can we address now? What can we do to get moving in that
25 direction? Yes, Mr. Pravda?

1 MR. PRAVDA: Your Honor, I don't think that that
2 actually changes the time line, from the Government's
3 perspective. As the Court is aware, we have been reviewing
4 the Government's classified to determine what is potentially
5 discoverable in this case. We have made tremendous progress.
6 We are not quite complete reviewing all the material, but we
7 are very close to being complete.

8 Your Honor, I would propose -- I'll go ahead and
9 file our CIPA Section 4 motion on July 24th, which is
10 approximately two months from today.

11 My anticipation at the moment, recognizing that
12 there is still a small volume of classified discovery to
13 review, is that there will not be any classified disclosures
14 made in this case; however, there will be classified material
15 that will be the subject of the Government's CIPA 4 motion.
16 So I think that we can go forward with that process. We can
17 file --

18 THE COURT: But they're not going to have any kind
19 of -- I'm just wondering whether that's just not too far in
20 advance.

21 When do you expect to be done with your review?

22 MR. PRAVDA: Your Honor, I would say approximately
23 two or two and-a-half weeks from now.

24 THE COURT: All right. So we'll have the Government
25 file its CIPA Section 4 motion by July 24th. Hopefully, it's

1 not going to concern too much material, just for the sake of
2 keeping the case moving forward.

3 How long, Mr. Cleary, would you need for a response?

4 MR. CLEARY: If we could have two weeks, Your Honor?

5 THE COURT: Okay.

6 MR. PRAVDA: Your Honor, if I may?

7 THE COURT: Yes?

8 MR. PRAVDA: We intend to file a CIPA Section 4 ex
9 parte and under seal. We certainly have no objection to
10 Mr. Cleary filing an ex parte submission of his own, as has
11 been done in other cases, where he amplifies to the Court what
12 defenses he intends to present, so that the Court can have the
13 benefit of that in reviewing the Government's motion.

14 THE COURT: And we've done that in the related case,
15 Ms. Lin's case, where defense counsel has filed -- has been
16 given leave to file her own ex parte motion explaining to the
17 Court from the defense perspective why the defense believes
18 that discovery of this information is necessary to the
19 defense.

20 I understand that you're kind of flying half blind,
21 since you don't really know what the information is, but it
22 certainly can help the Court conduct its review and its
23 evaluation.

24 So you think two weeks is going to be sufficient,
25 Mr. Cleary?

1 MR. CLEARY: I do, Your Honor. Thank you.

2 THE COURT: And you're going to make that ex parte
3 and under seal, as well?

4 MR. CLEARY: Correct, Your Honor.

5 THE COURT: Okay. And my deputy will explain.
6 (Consults with courtroom deputy.)

7 Oh, yes. The defense doesn't have classified
8 information, but the Government's papers may have to go
9 through Mr. Rucker, but the defense papers don't have to go
10 through Mr. Rucker because they don't have access yet to any
11 classified information. So it's just a sort of -- for want of
12 a better word, standard or unclassified. There's nothing
13 standard about an ex parte submission -- unclassified would be
14 the better word -- ex parte submission. So my deputy will let
15 you know what the procedures are for filing that.

16 We prefer to do any filings on the docket ourselves
17 when it comes to sealed documents. Okay? I'm in the process
18 also of amending my individual rules. So to avoid any kind of
19 confusion for criminal cases, I have an entirely separate
20 document entitled "Standard Requirements in Criminal Cases."
21 So ignore the sections that are in the civil case rules.
22 Okay? That's all going to be separated out and they'll be two
23 separate documents, one for civil cases and one for criminal
24 cases. If you do have any questions about filing, especially
25 filings under seal, just contact my deputy.

1 MR. CLEARY: Thank you.

2 THE COURT: Since the Government's not going to have
3 access to the defendant's ex parte submission, are the parties
4 available on Wednesday, September 6th?

5 MR. CLEARY: I'm sure we can be, Your Honor.

6 THE COURT: So that will be at ten o'clock. That
7 will be for either oral argument or status conference on the
8 motion. I don't know whether a hearing is going to be
9 necessary or not. I'll let the parties know if I think we
10 need to have a hearing or oral argument, for that matter.

11 MR. PRAVDA: Your Honor, I personally -- I'm
12 scheduled to be on trial, but my colleagues will be available.

13 THE COURT: Okay. An Order of Excludable Delay is
14 entered until September 6th, due to motion practice, and this
15 case has already been deemed complex.

16 Is there anything else that the parties wanted to
17 address with the Court? Have you received everything that the
18 prior counsel had?

19 MR. CLEARY: We have, Your Honor. He's been quite
20 cooperative with us.

21 THE COURT: So do you have anything additional for
22 new counsel?

23 MR. PRAVDA: Yes, Your Honor. Actually, I have
24 additional discovery that I brought with me. I didn't want to
25 be presumptuous as to who was going to be representing the

1 defendant.

2 THE COURT: Okay.

3 MR. PRAVDA: So I will get that to Mr. Cleary after
4 the conferences over, and we will file a Rule 16 letter on the
5 docket later today.

6 THE COURT: Okay. Is there anything else that the
7 parties want to raise today?

8 MR. CLEARY: There are a couple matters I would like
9 to raise, Your Honor.

10 THE COURT: Sure.

11 MR. CLEARY: One relates to discovery generally, the
12 nonclassified discovery. As I alerted the Government the
13 other day, I would like to ask the Court to set a strict
14 deadline for the Government to complete discovery of all of
15 its nonclassified materials that it currently has in its
16 possession, and I can explain to the Court why I would like to
17 do that.

18 In the January pretrial conference, the Government
19 represented to the Court that they would provide discovery
20 materials to the defense as they receive them.

21 THE COURT: Right.

22 MR. CLEARY: And I don't want to make a big deal of
23 this, but they didn't haven't done that. That material, I'm
24 assuming they have had for a while. They have not produced it
25 to either attorney, either Mr. Akerman, who has been counsel

1 of record, or to myself.

2 And they made a similar representation in February,
3 saying that they intend to and will be producing additional
4 unclassified discovery. Now here, we're three months later
5 and we're just seeing that.

6 So with that record, I'd ask the Court to direct the
7 Government to produce the remaining nonclassified discovery
8 that they currently have in their possession within the next
9 two weeks and if that becomes impossible for them to do, they
10 can come back to the Court and we can adjust the schedule
11 accordingly.

12 THE COURT: What is the status of the nonclassified
13 discovery, Mr. Pravda?

14 MR. PRAVDA: Your Honor, as with the classified
15 discovery, we're making tremendous progress there, as well.
16 As you know, we previously produced over two hundred thousand
17 pages of documents to Mr. Akerman. We have another 25,000
18 roughly in production that was given to Mr. Cleary today.
19 That is the substantial amount with all these documents that
20 are currently in the Government's possession with the
21 following caveat: We have a small additional amount that
22 we're still working on producing, which we expect to be able
23 to turn over in the next several weeks.

24 In addition to that, Your Honor --

25 THE COURT: When you say a small amount, how much

1 are you -- what do you mean? A hundred pages? A hundred
2 thousand? Twenty thousand?

3 MR. PRAVDA: Your Honor, probably a few hundred
4 pages, as well as some --

5 THE COURT: So what. I don't see -- why can you
6 give me a time frame?

7 MR. PRAVDA: We can produce that in the next two
8 weeks, Your Honor.

9 In addition --

10 THE COURT: Is that going to be the end of the
11 nonclassified discovery?

12 MR. PRAVDA: No, Your Honor. I was just getting to
13 the other two caveats.

14 THE COURT: Okay.

15 MR. PRAVDA: One is that we have some materials
16 that's been gathered that is subject to filter procedures
17 because they potentially contain attorney/client privileged
18 information of either the defendant or other individuals.

19 And we have set up a filter team that is working to
20 review those materials. We -- the government lawyers sitting
21 at this table -- have not yet reviewed any of that material
22 because it is still with the filter team, and that is material
23 that we will continue to produce as we -- who are sitting at
24 the table -- are able to review that.

25 In addition, Your Honor, we are still receiving

1 documents that are under subpoena that we have issued to,
2 among other entities, the defendant's employer. So as those
3 documents come to us, we will also turn them over to defense
4 counsel.

5 THE COURT: How many subpoenas are outstanding?

6 MR. PRAVDA: Your Honor, there are two that were
7 issued to the company, to Verizon. There are some other
8 subpoenas for which we may also continue to receive documents,
9 but we don't know that at this time.

10 THE COURT: So you have subpoenas out there that
11 have not yet been complied with? Is that what you're telling
12 me?

13 MR. PRAVDA: Yes.

14 THE COURT: Well, how long ago were those subpoenas
15 issued?

16 MR. PRAVDA: Your Honor, could I have one moment?

17 THE COURT: Yes.

18 MR. PRAVDA: (Confers with co-counsel.)

19 THE COURT: Yes?

20 MR. PRAVDA: Your Honor, we have a number of
21 subpoenas that were issued back in 2016. My colleague
22 clarifies that is not the case with the subpoena that no
23 documents have been provided in response to, but that some of
24 the subpoenas are to financial institutions that have been
25 providing us with documents on a rolling basis, which we have

1 also been giving to defense counsel on a rolling basis,
2 including in today's production. But some of these
3 productions from the financial institutions have not yet been
4 completed and we're continuing to receive material from them
5 on a rolling basis.

6 THE COURT: But they should be able to give you an
7 idea of how much more is out there and how long it's going to
8 take them to provide it to you.

9 MR. PRAVDA: We can follow up with each of them,
10 Your Honor.

11 THE COURT: Especially if the subpoenas were issued
12 back in 2016. We're in the fifth month of 2017 already.

13 MR. PRAVDA: I understand, but we did request quite
14 a substantial amount of information from them, Your Honor. We
15 didn't deem any of them to be --

16 THE COURT: I would imagine that all of this is on
17 computers.

18 MR. PRAVDA: Your Honor, I can't really can't speak
19 for how they process the material. All I can say is that they
20 have provided us the information.

21 THE COURT: I don't see how a financial institution
22 survives in modern day without documents being on a computer.
23 So I, you know, don't tell me that they're, you know,
24 searching paper documents by hand.

25 And the other thing is, if you're going to have a

1 filter team and we're going to have a status conference and
2 you can expect that part of what's going to be discussed at
3 the status conference is discovery, then you need to have a
4 member of the filter team here, so that the filter team can
5 advise the Court knowingly as to what their schedule is.

6 MR. PRAVDA: Okay.

7 THE COURT: Have they given you an idea of when
8 they're going to be done with their review?

9 MR. PRAVDA: Your Honor, we don't know. And in the
10 future, we will have a member of the filter team here.

11 I will say for information to relates to the
12 defendant himself, we can make arrangements to turn those
13 materials over without us reviewing them with the
14 attorney/client privilege information on them because it's his
15 privilege to waive. So that's something that we can arrange a
16 copy and produce without us actually reviewing it. But there
17 are some other materials that are contained now that will need
18 to be reviewed for privileged information, to make sure that
19 they're excluded before it's turned over to the defendant.

20 THE COURT: Well, I would expect that anything that
21 can be turned over to the defendant, that that discovery be
22 done by June 12th. I want a report from the filter team on
23 June 12th. That can be done by letter -- obviously, a copy to
24 defense counsel. Also by June 12th, as to when they can
25 expect to be done with their review of any privileged

1 documents. I assume they're producing some sort of a
2 privilege log. And from this team's end on June 12th, I would
3 like a status report as to what is left to produce and some
4 sort of a time line for the production of it.

5 MR. PRAVDA: Okay.

6 THE COURT: Obviously, if there's some issue with
7 those reports, I will be hearing from defense counsel.

8 MR. CLEARY: When the Court's ready, I have two
9 other matters, Your Honor, briefly.

10 THE COURT: Yes?

11 MR. CLEARY: Thank you.

12 The Court issued an ex parte order on March 16 which
13 permits the Government to redact, delay or withhold certain
14 documents. The Government, I assume, given the ex parte
15 nature of the order, has declined to provide us any
16 information on the basis of the order or the practical
17 implications in effect of it. So I am kind of in the dark
18 about this one, as well. But I had several questions about it
19 that I was wondering if the Court could answer.

20 And what we're really trying to find out is, what
21 evidence does that order apply to, and is the Court overseeing
22 the Government's decision? It seems it's left to the
23 Government to decide whether to withhold or redact or delay
24 production. Were they allowed to do that as they choose,
25 based on any particular document?

1 THE COURT: The Government is making the decision as
2 to what is being redacted in part because it either relates to
3 ongoing investigations or it relates to classified
4 information, and so on. So, I have -- I am certainly not
5 going to be inclined to be supervising every single little
6 piece of paper that's going to be turned over to counsel.

7 I'm not sure what the rest of your question is.

8 MR. CLEARY: That was very helpful, Your Honor, the
9 information you just provided --

10 THE COURT: Yes.

11 MR. CLEARY: -- with respect to redacted
12 information. But the order allows them, as I read it, to
13 withhold discovery from us entirely or to delay. And if they
14 are going to withhold discovery entirely, we would like to
15 know what that is, a description of it, as well as the basis
16 for it, and so, too, if they're going to delay.

17 THE COURT: That was the motion that was done ex
18 parte?

19 MR. CLEARY: Correct.

20 THE COURT: So you're asking me to divulge what was
21 provided to the Court ex parte, which I'm not going to do.

22 MR. CLEARY: I'm sorry. I'm not being clear with
23 Your Honor. I just want to know if, in fact -- I'm not asking
24 what the Government told the Court -- if, in fact, there is
25 going to be evidence that they're going to withhold from us

1 entirely, discovery materials that they're going to withhold
2 from us entirely, I would like to know a description of what
3 that evidence is, so we can decide whether to make an
4 application to the Court or not.

5 THE COURT: Does the Government wish to be heard?

6 MR. PRAVDA: Your Honor, as the Court will recall,
7 the order that it issued authorized the Government to withhold
8 certain discovery, but also to delay the production of other
9 discovery. I believe when the discovery is produced that the
10 Court authorized the Government to delay the production of, it
11 will become apparent what information is being withheld. So
12 in other words, Mr. Cleary will have a basis at that time to
13 understand what he's not getting.

14 THE COURT: I don't see how I can answer that
15 question without divulging what was in the ex parte
16 application.

17 MR. CLEARY: I think I now have what I need, Your
18 Honor. I heard the Government say that they were not going to
19 withhold entirely and never give to us any of the evidence
20 pursuant to the order.

21 THE COURT: There's a delay in production.

22 MR. CLEARY: Am I correct about that, just a delay
23 of production and redactions?

24 MR. PRAVDA: Well, no. There is both withheld and
25 redacted and delayed discovery.

1 MR. CLEARY: Can we be told when we're going to get
2 the stuff that's being delayed? When can we expect to receive
3 that?

4 THE COURT: You're in a position to answer that
5 question?

6 MR. PRAVDA: Your Honor, I don't have a copy of the
7 application in front of me, but there was certain discovery
8 that the Government indicated to the Court in the application
9 that it would produce by a specific date. What I don't recall
10 because I don't have the application in front me exactly what
11 that date is, but it is sometime I think -- I believe in late
12 summer.

13 THE COURT: Just bear with me for one second. I'll
14 bring up the application.

15 Some of the items described should have been turned
16 over already.

17 MR. PRAVDA: I'm sorry, Your Honor.

18 THE COURT: Some of the items described should have
19 been turned over already.

20 MR. PRAVDA: Yes, Your Honor. Once the Court
21 approved the order, the items that we identified in the order
22 that we would turn over were turned over.

23 THE COURT: Okay. And that includes redacted
24 versions of the documents, correct?

25 MR. PRAVDA: Yes.

1 THE COURT: Okay. And what I see is, with respect
2 to delayed discovery, the Government represented that it would
3 provide -- that it would disclose the documents at a date not
4 later than 120 days prior to trial.

5 MR. PRAVDA: Your Honor, that's correct as to one of
6 the categories and then there's a second category that we
7 agreed to turn over in -- I said late summer. I think it was
8 late July, the actual date.

9 THE COURT: I'm looking. I'm not seeing an actual
10 date yet. I'm seeing -- yes. There were certain -- yes.
11 There were certain documents.

12 So there's one category of documents that the
13 Government is seeking to delay discovery of to a date not
14 later than 120 days prior to trial, and as Mr. Pravda says,
15 there's another category. There's a second category of
16 delayed disclosure documents that should be, as the Government
17 represented, four months from the date -- from the
18 application. So that would bring us into July.

19 MR. PRAVDA: Yes.

20 THE COURT: Okay. So that's yet another category.
21 So there are certain categories of documents or evidence that
22 the Government is seeking to disclose 120 days prior to trial.
23 And then the other category, which hopefully, you will be
24 getting in July.

25 MR. CLEARY: Thank you, Your Honor. That's very

1 helpful and gives me a basis to have a discussion with the
2 Government --

3 THE COURT: Okay.

4 MR. CLEARY: -- to try to resolve our differences
5 and we can come back to the Court, but this could be a basis
6 for our discussion. I appreciate that.

7 THE COURT: All right.

8 MR. CLEARY: Your Honor, one last issue and it
9 relates to the Speedy Trial clock. I know you excluded time
10 and it's mandatory to exclude it for the filing of motions, so
11 I have no issue with that. But previously in going over the
12 record, I've noticed that the Court has excluded time because
13 of the co-defendant's absence. And if that order is no more
14 applicable, I have nothing to say about that, but if that
15 order is, I would like to be heard on that issue, Your Honor.

16 THE COURT: We have just been dealing with the case
17 moving forward as to Mr. Zhong.

18 MR. CLEARY: But the Court previously excluded time
19 under the Speedy Trial Act because of the unavailability of
20 the co-defendant. And that rule, as the Court knows, only
21 allows exclusion of time for a reasonable period. Those are
22 words used in the statute.

23 And I think under the circumstances of this case,
24 where we have no extradition treaty with China and there is
25 really no reason to expect that Mr. Wong will be coming back

1 to stand trial, that under those circumstances, the reasonable
2 period for which time could be excluded has passed. And
3 indeed, the very reason for that exclusion, as the Court
4 knows, is so that the Speedy Trial clock is not in an
5 impediment to trying co-defendants together. That really
6 doesn't apply here. So if that's a continuing order, we would
7 ask that there no longer be time excluded due to the
8 unavailability of the co-defendant.

9 THE COURT: Well, does the Government wish to be
10 heard?

11 MR. PRAVDA: Your Honor, I believe that as a legal
12 matter, in order for that to be the case, the defendant would
13 need to move for severance from the co-defendant, and that's
14 not an application that has been made.

15 THE COURT: There has not been a motion for
16 severance --

17 MR. CLEARY: And we plan on doing that, Your Honor.

18 THE COURT: -- from the co-defendant.

19 MR. CLEARY: And the last order -- the last basis
20 for excluding time.

21 THE COURT: And you don't need a motion conference
22 request for that. You can just make the motion.

23 MR. CLEARY: Just do it on paper? So do it on
24 paper?

25 THE COURT: Yes.

1 MR. CLEARY: Okay. Thank you, Your Honor.

2 The last basis previously that the Court had used to
3 exclude time was a complex case designation. My position is
4 that I don't think a complex case designation, given some of
5 the delays we have had in receiving the nonclassified
6 discovery -- nonclassified discovery that was not subject to
7 the ex parte order, like the discs that they're going to give
8 us today, because of that, I don't think that it's appropriate
9 to exclude any more time under a complex case designation,
10 because under those circumstances, I don't think the ends of
11 justice would be served by the exclusion of any more time.

12 THE COURT: Well, you know, it hasn't just been a
13 matter of a delay in discovery here. Okay? There was a delay
14 that could not be helped in terms of getting security
15 clearance for prior counsel. Now there's going to be a delay
16 in the clearance of current counsel. And to the extent that
17 there is a mixed bag here of both classified and unclassified
18 information, then there's going to be a certain level of
19 built-in delay --

20 MR. CLEARY: Understood.

21 THE COURT: -- in any event, and that is due to the
22 complexity of this case.

23 Does the Government wish to be heard with respect to
24 counsel's argument?

25 MR. PRAVDA: Your Honor, not with respect to what

1 you -- what Your Honor just said. I do want to respond to the
2 notion that somehow the Government delayed in producing
3 unclassified discovery because that's not the case.

4 And Mr. Cleary specifically said that we should have
5 given it to Mr. Akerman earlier. This information, including
6 discovery, that's subject to the protective order that the
7 Court entered governing sensitive discovery. Mr. Akerman and
8 the attorneys from Dorsey and Whitney did not sign the
9 protective order, nor did Mr. Fitzpatrick sign the protective
10 order. We are not going to produce discovery subject to the
11 protective order without counsel for the defendant signing the
12 protective order.

13 Mr. Cleary entered the case frankly a couple weeks
14 ago. We sat down with him. We met with him. We brought him
15 up to a speed on the status of the case. We reached out to
16 Mr. Rucker to get the process of classified clearances for
17 counsel started. So the notion that the Government has
18 somehow delayed is, quite frankly, offensive.

19 MR. CLEARY: I don't mean to offend Your Honor. I
20 was just trying to state my understanding about the state of
21 play with discovery, and we can take these issues up with the
22 Government and not burden the Court with it.

23 THE COURT: Well, and certainly, the Court -- and
24 with the assistance of the Department of Justice with the
25 office that handles the classified information has done

1 everything that it can to expedite the clearances and to
2 expedite this case moving forward. So the case is moving
3 relatively more quickly than other cases like this one that I
4 have presided over and that other judges in this court have
5 presided over.

6 So, Mr. Zhong has built in some delay by, as I said
7 earlier, by getting new counsel. So we deal with the way that
8 we can deal with and I certainly, to whatever extent the Court
9 can be helpful in moving the case forward, I would glad to
10 assist in that regard.

11 But there has been a lot of material here. There
12 has been a lot of review. Some of it has already been done in
13 connection with the Lin case, to the extent that this case
14 crosses over with that, overlaps to a certain degree and with
15 respect to the co-defendant in this case, that you can file
16 your motion as soon as you're able to and I'll ask the
17 Government to respond --

18 MR. CLEARY: Thank you, Your Honor.

19 THE COURT: -- within 14 days.

20 MR. PRAVDA: Nothing else from the Government, Your
21 Honor.

22 THE COURT: Okay. Anything else?

23 MR. CLEARY: Nothing further, Your Honor. Thank you
24 for your time.

25 THE COURT: All right. Thank you, very much.

1 Marshals, you may take charge.

2 Thank you, Ms. Ong.

3 (Proceedings concluded.)

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